

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. <u>94-1</u>
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

**REPLY TO OPPOSITIONS TO,  
AND COMMENTS ON,  
PETITION FOR PARTIAL RECONSIDERATION**

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee") submits this Reply to the oppositions to, and comments on, the Petition for Partial Reconsideration that the Ad Hoc Committee and others filed on July 11, 1997, in this proceeding.

In their Petition for Partial Reconsideration, the Ad Hoc Committee and a number of other large business users<sup>1</sup> (collectively, the "User Parties") asked the Commission to reconsider its decision in the *Access Charge Reform* Order<sup>2</sup> to

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<sup>1</sup> Joining the Ad Hoc Committee in its Petition were First Data Corporation, Bankers Clearing House, The New York Clearing House Association, Mastercard International Incorporated, and VISA, U.S.A., Inc.

<sup>2</sup> *Access Charge Reform*, CC Dkt. No. 96-262, First Report and Order, FCC 97-158 (released May 16, 1997), 62 Fed. Reg. 31868 (published June 11, 1997) ("Order").

allow local exchange carriers ("LECs") to implement call set-up charges effective July 1, 1998. The User Parties requested an extension of the implementation date and transition period for an additional two years, *i.e.*, until July 1, 2001. CompuServe Incorporated also requested the same relief in a Petition for Reconsideration.<sup>3</sup>

The commenters that have addressed the User Parties' (and/or CompuServe's) request for an extension of the period for transitioning to the new call set-up charge are, predictably, sharply divided. LEC interests, including BellSouth Corporation ("BellSouth"), GTE Service Corporation ("GTE"), US West, Inc. ("US West"), and the United States Telephone Association ("USTA"), have opposed the extension with remarkably little basis. Users and interexchange carriers ("IXCs"), including the American Petroleum Institute ("API"), MCI Telecommunications Corporation ("MCI"), and Sprint Corporation ("Sprint"), have supported the requested extension. After weighing the conflicting arguments on their merits, the Commission should conclude that there is a substantial basis in the record for granting the requested extension.

In their Petition, the User Parties demonstrated that an additional two-year extension was necessary to enable them -- and other users with high volumes of short duration calls -- to re-evaluate their communications arrangements and business requirements to adapt to the new rate structure. Having entered into binding agreements with their customers based on underlying economics that do

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<sup>3</sup> CompuServe Incorporated Petition for Reconsideration (July 10, 1997).

not include call set up charges, the replacement of the prior rate structure with one that includes call set-up charges will dramatically alter the economics of their businesses.<sup>4</sup>

MCI has agreed that, absent the requested extension, the impact of the new set-up charges "would significantly affect the underlying economics of such large telecommunications users."<sup>5</sup> MCI cited the history of recognition by the Commission and the courts of the need for reasonable transition periods to avoid service disruptions resulting from rate increases. In addition, the users' need to establish new vendor relationships, and the regulatory uncertainty created by the *Internet NOI*<sup>6</sup> caused MCI to conclude that the requested extension "would be in the public interest."<sup>7</sup>

Sprint has also concurred with the User Parties and CompuServe, stating that they both have

persuasively demonstrated that more time is needed by large communications users to fully evaluate their communications options . . . and to implement new network configurations if that is the course they decide to pursue.<sup>[8]</sup>

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<sup>4</sup> User Parties' Petition for Partial Reconsideration ("User Parties' Petition") (July 11, 1997) at 3-4.

<sup>5</sup> MCI Comments at 21.

<sup>6</sup> *Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Inquiry, 11 FCC Rcd 21354 (December 24, 1996).

<sup>7</sup> MCI Comments at 21.

<sup>8</sup> Sprint Opposition to and Comments on Petitions for Reconsideration at 3.

Consistent with Sprint's position, API has stated that "[r]ecord evidence supports a three-year moratorium on call set-up charges."<sup>9</sup> API specifically noted the Commission's observation in the Order that estimates of call set-up costs are "widely varying," and it argued that an extension would help "ensure that the rates ultimately borne by end users will reflect the costs actually incurred in call set-ups."<sup>10</sup> Noting both the requesting parties' "valid considerations and the absence of record opposition," API has urged the Commission to grant the desired extension.<sup>11</sup>

Compared to the well-reasoned arguments of the commenters that have supported the requests for an additional two-year extension, the positions taken by opponents of an extension are hollow and baseless.

US West opposes the User Parties' request for extension of the date for implementing call set-up charges on the grounds that such an extension would prolong what US West characterizes as "an implicit subsidy of short duration calls by longer duration calls."<sup>12</sup> This subsidy, US West contends, occurs because call set-up costs are incurred on a per-call, rather than per-minute

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<sup>9</sup> API Reply to Petitions for Reconsideration at 10.

<sup>10</sup> *Id.* at 11 (citing Order at ¶ 137).

<sup>11</sup> *Id.* at 10.

<sup>12</sup> US West Comments and Opposition ("US West Comments") at 8-9.

basis; therefore, recovery of these costs on a per-minute basis is contrary to principles of cost causation.<sup>13</sup>

USTA does not even attempt to justify its opposition to the implementation extension the User Parties are seeking, merely stating summarily that "[t]here is no reason to delay the implementation."<sup>14</sup> BellSouth argues only that "[e]ffectively, interstate customers have had the benefit of a transition period since the interim transport rate structure went into effect four years ago."<sup>15</sup>

Significantly, none of the opponents of the extension claims, nor could they, that an extension of the date for implementing call set-up charges (and concurrent extension of the *status quo*) would deny LECs the ability to recover their costs of signaling call set-up. Indeed, GTE concedes that "[t]he costs associated with call set-up are already being recovered in switched access charges."<sup>16</sup>

While the User Parties as a general matter oppose economically inefficient rate structures and implicit subsidies, in light of the significant financial impact that would result from a rushed implementation of call set-up charges, on

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<sup>13</sup> *Id.* at 9-10. GTE has taken a similar position as its sole basis for opposing an extension. GTE Opposition to and Comments on Petitions for Reconsideration ("GTE Opposition") at 24.

<sup>14</sup> USTA Comments on Petitions for Reconsideration ("USTA Comments") at 9. USTA states, however, that the incumbent LECs "will have adequate time" to make any billing system adjustments that may be necessary to verify charges under the new rate structure. *Id.* Although it provides no support for this speculative claim, USTA raises a concern that provides an independent basis for extending the implementation date, namely, to give the LECs ample time to re-design their billing systems to accommodate the new rate structure.

<sup>15</sup> BellSouth Opposition to and Comments on Petitions for Reconsideration at 12.

<sup>16</sup> GTE Opposition at 24.

balance, a modest, two-year extension of the implementation date is more than justified.

As the User Parties have pointed out, there is ample precedent for extending the implementation of rate changes to avoid harsh financial consequences. In the Order itself, for example, the Commission determined that “because of the potential magnitude of the rate impact of [implementing a cost-based rate structure for tandem—switched transport] . . . a four-step implementation over a two-year period will minimize the risk of rate shock and [will] allow transport customers to adjust while we move . . . to cost-based transport rates . . . .”<sup>17</sup>

US West mischaracterizes the User Parties' position as “suggest[ing]” that the call set-up charge represents an interstate rate increase, and then counters its own mischaracterization by asserting that the new permissive charge is a “revenue-neutral filing that moves the cost of signaling call set-up from local switching rates and the TIC to the new signaling rate structure.”<sup>18</sup> The fact is, the net result of the permissive call set-up charge will be a significant increase in the

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<sup>17</sup> Order at ¶ 166. Other proceedings in which the Commission adopted transition periods to avoid the harmful effects of rate increases include *Investigation of Access and Divestiture Related Tariffs*, Report and Order, 102 FCC 2d 1007, 1008 -1009, 1018 - 1028 (1985) and *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, Second Report and Order, 98 FCC 2d 814 at ¶¶ 22-25(1984), *aff'd*, 100 FCC 2d 1290 (1985).

<sup>18</sup> US West Comments at 8-9.

rates paid for short duration calls by the User Parties and other business users with large volumes of such calls.<sup>19</sup>

US West seizes on the User Parties' own statements that the number of short duration calls that would be affected by the new charge is substantial, with more than 8.5 billion credit and debit card transactions in 1996.<sup>20</sup> But both US West and USTA completely ignore the substantial financial impact that the new call set-up charge will have on users whose traffic contributes to this figure. GTE goes even further, arguing that, because many of the users that would be affected by the rate re-structuring are "large financial institutions," those users "can claim no inequity or undue harm by being forced to pay" call set-up charges.<sup>21</sup> GTE's untenable position is belied by the record.

As the User Parties pointed out in their Petition, based on 1996 figures, the telecommunications costs for debit and credit card transactions would increase by some \$122,000,000 per year, if carriers impose call set-up charges in the range of those implemented in California.<sup>22</sup>

US West speculates that the type of calls at issue here "could," "[i]n the future," "be the type of transient signaling messages (i.e., messages that neither

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<sup>19</sup> US West's implication that the IXCs, upon whom the LECs will impose the call set-up charges, may not pass those charges through to end users, *id.* at 9, n.23, is naïve at best.

<sup>20</sup> *Id.* at 9 (citing User Parties' Petition at 8).

<sup>21</sup> GTE Opposition at 24.

<sup>22</sup> This scenario is far from hypothetical. In California, Pacific Bell has tariffed a call set-up charge of 1.438 cents per message, and this charge has been approved by the California Public Utilities Commission. Pacific Bell, Schedule Cal. P.U.C. No. 175-T, Sheet 226.

originate nor terminate in an incumbent LEC's calling area)" that use US West's network but do not give US West the opportunity to recover the cost of transmitting the message.<sup>23</sup> Such complete speculation is hardly grounds for rushing to impose an enormous new financial burden on a class of users which in turn would create a very real threat of rate shock that could reverberate throughout other sectors of the nation's economy.<sup>24</sup>

By ignoring the enormous impact of the new call set-up charge on high-volume, short-duration users, opponents of the extension have failed to respond to the principal reason the User Parties have requested an extension of the implementation date. Accordingly, their oppositions should be disregarded.

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<sup>23</sup> US West Comments at 9-10.

<sup>24</sup> Similarly, US West's unsupported claim that high-volume, short duration users are developing new services that could outpace the growth of the voice network, *id.* at 10, is speculative and, if anything, lends support to the User Parties' argument that implementation of call set-up charges should be held in abeyance, pending the resolution of pending and expected Commission inquiries regarding upgrading of the public switched network and deployment of advanced services. See User Parties' Petition at 8-9.



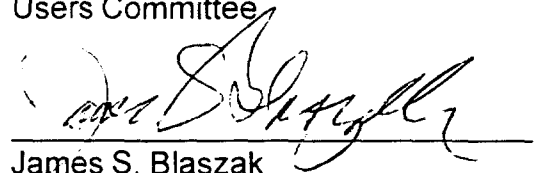
## CONCLUSION

The record in this proceeding provides overwhelming support for a grant of the additional two-year extension that has been requested for implementation of the new call set-up charges. When weighed against the substantial reasons for granting such an extension, the arguments against an extension are of no consequence. For the foregoing reasons, the Ad Hoc Committee requests that the Commission grant the User Parties' Petition for Partial Reconsideration and adopt an additional two-year extension for implementation of call set-up charges.

Respectfully submitted,

Ad Hoc Telecommunications  
Users Committee

By:



James S. Blaszak  
Kevin S. DiLallo  
Levine, Blaszak, Block  
& Boothby, LLP  
1300 Connecticut Avenue, NW.  
Suite 500  
Washington, DC 20036  
(202) 223-4980

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## CERTIFICATE OF SERVICE

I, Kurt A. Kaiser, hereby certify that on this 2<sup>nd</sup> day of September, 1997, true and correct copies of the preceding Reply to Oppositions to, and Comments on, Petition for Partial Reconsideration on behalf of Ad Hoc Telecommunications Users Committee in CC Docket Nos. 96-262, 94-1, 91-213 and 96-263 were served by hand delivery\* and via first-class U.S. mail, postage prepaid upon the following parties:

James Schlichting\*  
Chief  
Competitive Pricing Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW.  
Room 518  
Washington, D.C. 20554

ITS\*  
1919 M Street, NW.  
Room 246  
Washington, D.C. 20554

Ward W. Wueste  
Gail L. Polivy  
1850 M Street, NW.  
Suite 1200  
Washington, DC 20036  
Attorneys for GTE Service Corp.

Bradley Stillman  
Don Sussman  
Alan Buzacott  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, NW.  
Washington, DC 20006

Robert B. McKenna  
Jeffrey A. Brueggeman  
Suite 700  
1020 19<sup>th</sup> Street, NW.  
Washington, DC 20036  
Attorneys for U S West, Inc.

R. Michael Senkowski  
Jeffrey S. Linder  
Gregory J. Vogt  
WILEY, REIN & FIELDING  
1776 K Street, NW.  
Washington, D.C. 20006  
Attorneys for GTE Service Corp.

Wayne V. Black  
C. Douglas Jarrett  
Susan M. Hafeli  
KELLER AND HECKMAN LLP  
1001 G Street, NW.  
Suite 500 West  
Washington, DC 20001  
Attorneys for American  
Petroleum Institute

Mary McDermott  
Linda Kent  
Keith Townsend  
Hance Haney  
1401 H Street, NW. Suite 600  
Washington, DC 20005  
Attorneys for United States  
Telephone Association

Leon M. Kestenbaum  
Jay C. Keithley  
H. Richard Juhnke  
1850 M Street, NW., 11<sup>th</sup> Floor  
Washington, DC 20036  
Attorneys for Sprint Corporation

M. Robert Sutherland  
Richard M. Sbaratta  
1155 Peachtree Street, N.E.  
Suite 1700  
Atlanta, Georgia 30309-3610  
Attorneys for BellSouth Corp.  
and BellSouth  
Telecommunications, Inc.

Secretary\*  
Federal Communications  
Commission  
1919 M Street, NW.  
Washington, DC 20554

  
Kurt A. Kaiser